

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

**MINNESOTA LAWYERS MUTUAL
INSURANCE COMPANY,**

Plaintiff,

vs.

No. 17-cv-2004

**CYNTHIA J. KOROLL and ROCA LABS,
INC.,**

Defendants.

STATUS REPORT

Plaintiff, Minnesota Lawyers Mutual Insurance Company (MLM), by and through counsel, submits the following position paper and status report regarding the pending Florida litigation, pursuant to this Court's Order entered September 14, 2018:

I. The Pending Florida Malpractice and Bankruptcy Litigation.

MLM reported on September 13, 2018 that, based on the undersigned counsel's review of the online docket, the underlying lawsuit which is the subject of this declaratory judgment action, *Roca Labs, Inc. v. Cynthia Koroll*, No. 15-CA-006540 (Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida) ("Roca Labs lawsuit") had "apparently been closed." This Court's order of September 14, 2018 directed MLM to file a written report or position paper "in light of its report that the underlying Florida malpractice case has been closed." [Docket no. 32]

MLM retained Florida counsel to review the pleadings filed in the Roca Labs lawsuit and to determine whether that case is open or closed. Attached as Exhibit A is the affidavit of James T. Ferrara, an experienced Florida attorney and former Palm Beach County, Florida judge. Mr. Ferrara states that based on his review of the court records in the Roca Labs lawsuit, the case has not been dismissed and remains open.

In addition, Mr. Ferrara's affidavit states that the chapter 7 bankruptcy proceeding involving Roca Labs, Inc. does not automatically stay the prosecution of the Roca Labs lawsuit, because the automatic stay provision under chapter 7 of the bankruptcy code operates to stay only lawsuits *against* Roca Labs, Inc. as debtor, not lawsuits filed by the debtor. Thus, the bankruptcy trustee will have to determine whether to pursue the Roca Labs lawsuit.

As previously reported, MLM has retained separate Florida counsel to defend Ms. Koroll against the Roca Labs lawsuit. Since MLM's September 13 report, defense counsel has made additional attempts to contact the bankruptcy trustee to determine whether the trustee intends to pursue the claim represented by the Roca Labs lawsuit. As of the date of this report, the trustee has not responded to any of defense counsel's inquiries.

II. Conclusion.

Based on the affidavit of Mr. Ferrara, the underlying Roca Labs lawsuit against Ms. Koroll in Hillsborough County, Florida remains open. In addition, MLM does not yet know, in spite of multiple inquiries, whether the bankruptcy trustee will pursue the claim represented by the Roca Labs lawsuit. Counsel for MLM will advise the Court promptly when it learns of any new information in this regard. Accordingly, MLM respectfully requests that the stay currently in place in this declaratory judgment action be continued.

Respectfully submitted,

By: s/ Jeffrey A. Siderius
Jeffrey A. Siderius (jas@crayhuber.com)
Cray Huber Horstman Heil
& VanAusdal, LLC
303 W. Madison Street, Suite 2200
Chicago, IL 60606
(312) 332-8450
*Attorney for Plaintiff Minnesota Lawyers
Mutual Insurance Company*

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

MINNESOTA LAWYERS MUTUAL)
INSURANCE COMPANY,)

Plaintiff,)

No. 17-cv-02004

v.)

CYNTHIA J. KOROLL and ROCA LABS,)
INC.,)

Defendants.)
_____)

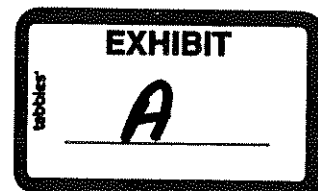
AFFIDAVIT OF JAMES T. FERRARA, ESQ.

STATE OF FLORIDA
COUNTY OF BROWARD

Before me, the undersigned authority, on this day, personally appeared, James T.

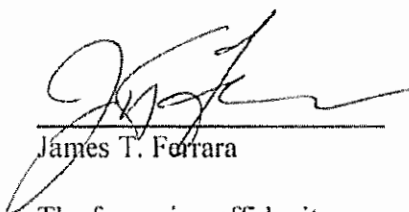
Ferrara, Esq. who, upon being duly sworn, deposes and says:

1. My name is James T. Ferrara and I have been admitted to practice before the Florida Bar since September 1988.
2. Prior to returning to private practice in 2017, I served as a Circuit Court Judge in Florida's 15th Judicial Circuit, in and for Palm Beach County, Florida.
3. I have reviewed the Court Clerk's docket in the legal malpractice case of *Roca Labs, Inc. v. Cynthia Koroll*, Case No. 29 2015 CA 006540, which is pending in the Circuit Court of the 13th Judicial Circuit, in and for Hillsborough County, Florida, for the purpose of determining the status of that litigation.
4. Based upon my review of the docket sheet, I have determined that the matter has neither



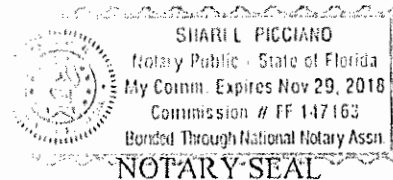
been adjudicated, voluntarily dismissed, nor involuntarily dismissed. As of the date of this affidavit, the matter remains an open and pending case before that Court.

5. On March 15, 2018, a suggestion of bankruptcy was filed in the case by the Defendant's counsel. However, because the Plaintiff, Roca Labs, Inc. is the debtor in bankruptcy, there was no automatic stay of this litigation, as the automatic stay only applies as to actions against a debtor, and not as to actions filed by a debtor. See, *In re Merrick*, 175 B.R. 333 (9th Cir. BAP 1994); *In re Mitchell*, 206 B.R. 204, 212 (Bankr. C.D. Cal. 1997) ("Section 362 stay does not apply where, as here, the debtor is the plaintiff in a lawsuit.").


James T. Ferrara

The foregoing affidavit was acknowledged before me this 17th day of October 2018, by James T. Ferrara who is personally known to me.


NOTARY PUBLIC, STATE OF FLORIDA



Printed Name of Notary